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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 RENARDO ROBERTSON, an individual,)
10 and RENARDO and DONNA ROBERTSON,)
and their marital community,)

11 Plaintiffs,)

12 v.)

13 CATHOLIC COMMUNITY SERVICES OF)
14 WESTERN WASHINGTON, a Washington)
public benefit corporation,)

15 Defendant.)
16

Case No. 2:19-cv-01618-RSM

STIPULATED PROTECTIVE ORDER

17 Plaintiffs, through their counsel, and Defendant Catholic Community Services of Western
18 Washington ("CCSWW" or "Defendant"), through its counsel, hereby stipulate and agree to the
19 entry of the following Protective Order regarding the Confidential Information more particularly
20 described below.

21 1. PURPOSES AND LIMITATIONS

22 Discovery in this action is likely to involve production of confidential, proprietary, or
23 private information for which special protection may be warranted. This matter arises out of the
24 complaint filed by Plaintiff. Additional requested discovery includes other materials that also
25 qualify for protection under Fed. R. Civ. P. 26(c). Accordingly, the parties hereby stipulate to
26 and petition the court to enter the following Stipulated Protective Order. The parties acknowledge
27 that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all

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1 disclosures or responses to discovery, the protection it affords from public disclosure and use
2 extends only to the limited information or items that are entitled to confidential treatment under
3 the applicable legal principles, and it does not presumptively entitle parties to file confidential
4 information under seal.

5 2. "CONFIDENTIAL" MATERIAL

6 "Confidential Material" means any information that the Designating Party reasonably and
7 in good faith believes falls within one or more of the following categories: (1) commercial,
8 business, financial, or proprietary information which is competitively sensitive, has competitive
9 commercial value, or would otherwise adversely affect a party's business, commercial,
10 economic, or financial interests or status in a competitive market or industry; (2) trade secret
11 information as defined in the Uniform Trade Secrets Act, chapter 19.108 RCW; (3) tax returns
12 and banking records; (4) medical records and related medical billing records which constitute
13 "protected health information" or "individually identifiable health information" under the
14 Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"),
15 Pub. L 104-191; or (5) personnel records or other personal information, only if the disclosure of
16 the personnel records or other personal information would violate the privacy rights of any
17 individual under the Washington Public Records Act, RCW 42.56.050, which provides: "A
18 person's 'right to privacy,' 'right of privacy,' 'privacy,' or 'personal privacy,' . . . is invaded only
19 if disclosure of information about the person: (1) would be highly offensive to a reasonable
20 person, and (2) is not a legitimate concern to the public."

21 The parties may need to amend or revise the above definition of "Confidential
22 Information" from time to time.

23 3. SCOPE

24 The protections conferred by this agreement cover not only confidential material (as
25 defined above), but also (1) any information copied or extracted from confidential material; (2)
26 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
27 conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in
2 the public domain or becomes part of the public domain through trial or otherwise. Nor do they
3 apply to documents or information legally developed or legally obtained by independent
4 investigation or discovery.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
7 or produced by another party or by a non-party in connection with this case only for prosecuting,
8 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
9 the categories of persons and under the conditions described in this agreement. Confidential
10 material must be stored and maintained by a receiving party at a location and in a secure manner
11 that ensures that access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
13 ordered by the court or permitted in writing by the designating party, a receiving party may
14 disclose any confidential material only to:

15 (a) the receiving party's counsel of record in this action, as well as employees of
16 counsel to whom it is reasonably necessary to disclose the information for this litigation;

17 (b) the officers, directors, and employees (including in house counsel) of the
18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
19 agree that a particular document or material produced is for Attorney's Eyes Only and is so
20 designated;

21 (c) experts and consultants to whom disclosure is reasonably necessary for this
22 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (d) the court, court personnel, and court reporters and their staff;

24 (e) copy or imaging services retained by counsel to assist in the duplication of
25 confidential material, provided that counsel for the party retaining the copy or imaging service
26 instructs the service not to disclose any confidential material to third parties and to immediately
27 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
3 A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
4 deposition testimony or exhibits to depositions that reveal confidential material must be
5 separately bound by the court reporter and may not be disclosed to anyone except as permitted
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a custodian or
8 other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or
10 referencing such material in court filings, the filing party shall confer with the designating party,
11 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
12 remove the confidential designation, whether the document can be redacted, or whether a motion
13 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
14 designating party must identify the basis for sealing the specific confidential information at issue,
15 and the filing party shall include this basis in its motion to seal, along with any objection to
16 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
17 followed and the standards that will be applied when a party seeks permission from the court to
18 file material under seal. A party who seeks to maintain the confidentiality of its information must
19 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion
20 to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in
21 accordance with the strong presumption of public access to the Court’s files.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
24 or non-party that designates information or items for protection under this agreement must take
25 care to limit any such designation to specific material that qualifies under the appropriate
26 standards. The designating party must designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated
8 for protection do not qualify for protection, the designating party must promptly notify all other
9 parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "CONFIDENTIAL" to each page that contains
17 confidential material. If only a portion or portions of the material on a page qualifies for
18 protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making
19 appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
21 participating non-parties must identify on the record, during the deposition or other pretrial
22 proceeding, all protected testimony, without prejudice to their right to so designate other
23 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
24 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
25 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
26 confidential information at trial, the issue should be addressed during the pre-trial conference.
27

1 (c) Other tangible items: the producing party must affix in a prominent place on the
2 exterior of the container or containers in which the information or item is stored the word
3 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
4 the producing party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
6 designate qualified information or items does not, standing alone, waive the designating party’s
7 right to secure protection under this agreement for such material. Upon timely correction of a
8 designation, the receiving party must make reasonable efforts to ensure that the material is treated
9 in accordance with the provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
14 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
18 regarding confidential designations without court involvement. Any motion regarding
19 confidential designations or for a protective order must include a certification, in the motion or
20 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
21 conference with other affected parties in an effort to resolve the dispute without court action. The
22 certification must list the date, manner, and participants to the conference. A good faith effort to
23 confer requires a face-to-face meeting or a telephone conference.

24 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
25 intervention, the designating party may file and serve a motion to retain confidentiality under
26 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
27 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those

1 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
2 other parties) may expose the challenging party to sanctions. All parties shall continue to
3 maintain the material in question as confidential until the court rules on the challenge.

4 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
5 LITIGATION

6 If a party is served with a subpoena or a court order issued in other litigation that compels
7 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
8 must:

9 (a) promptly notify the designating party in writing and include a copy of the
10 subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue in
12 the other litigation that some or all of the material covered by the subpoena or order is subject to
13 this agreement. Such notification shall include a copy of this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
15 designating party whose confidential material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
18 material to any person or in any circumstance not authorized under this agreement, the receiving
19 party must immediately (a) notify in writing the designating party of the unauthorized
20 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
21 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
22 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
23 Agreement to Be Bound” that is attached hereto as Exhibit A.

24 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
25 MATERIAL

26 When a producing party gives notice to receiving parties that certain inadvertently
27 produced material is subject to a claim of privilege or other protection, the obligations of the

1 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
2 provision is not intended to modify whatever procedure may be established in an e-discovery
3 order or agreement that provides for production without prior privilege review. The parties agree
4 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

5 10. NON TERMINATION AND RETURN OF DOCUMENTS

6 Within 60 days after the termination of this action, including all appeals, each receiving
7 party must return all confidential material to the producing party, including all copies, extracts
8 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
9 destruction.

10 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
11 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
12 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
13 work product, even if such materials contain confidential material. All such material shall remain
14 subject to the confidentiality obligations imposed by this agreement after the termination of this
15 litigation.

16 The confidentiality obligations imposed by this agreement shall remain in effect until a
17 designating party agrees otherwise in writing or a court orders otherwise.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 DATED this 27th day of February, 2020.

20
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on
7 _____ [date] in the case of _____. I agree to comply with and to be
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
10 solemnly promise that I will not disclose in any manner any information or item that is subject
11 to this Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 SIGNATURE: _____

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 28th day of February 2020.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE